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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/977,170	10/12/2001	Richard H. Balmer	A148 1550	2857

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EXAMINER

FISCHER, JUSTIN R

ART UNIT PAPER NUMBER

1733

DATE MAILED: 02/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

AS

**Office Action Summary**

Application No.

09/977,170

Applicant(s)

BALMER ET AL.

Examiner

Justin R Fischer

Art Unit

1733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 November 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,4-10,12-22,24-29,34 and 36-47 is/are pending in the application.
- 4a) Of the above claim(s) 9,10,12-16,34,36-39,41,43,45 and 47 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-8,17-22,24-29,40,42,44 and 46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 October 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. Applicant's election with traverse of a surface covering sheet and a method of making the same in Paper No. 11 is acknowledged. The traversal is on the ground(s) that original claims 9 and 34 are no longer independent but depend directly or indirectly on independent claim 1. However, as previously stated, the surface covering sheet and the welding rod are related as mutually exclusive species in an intermediate-final product relationship, wherein the surface covering sheet can be used as a decorative article and does not need to be further processed into a welding rod (requires compression molding).

The requirement is still deemed proper and is therefore made FINAL.

### ***Claim Rejections - 35 USC § 102/103***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 2, 4-8, 17-22, 24-29, 40, 42, 44, and 46 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious

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over Hover (US 4,923,658). Hover discloses a method of forming flat articles, including surface covering sheets for floors and walls, comprising the steps of providing a blend of differently colored granules or agglomerates to a conveying system, applying a thermal pre-treatment above the softening temperature to process said blend into an agglomerate or granular mixture, and compressing or consolidating the thus treated agglomerates or granules at a pressing station (Abstract, Column 2, Lines 40-49, and Column 8, Lines 10-25). As defined by applicant, the term "jaspe" is used to describe, for example, the inclusion of various shades of one color or multiple colors. Thus, a first plurality of particles having a first visual characteristic and a second plurality of particles having a second visual characteristic are agglomerated as a result of the above noted thermal pre-treatment. Furthermore, if the jaspe particle formation of Hover is not seen to be manufactured in accordance to the claimed invention, one of ordinary skill in the art at the time of the invention would have found it obvious to combine differently colored particles or agglomerates to obtain a desired aesthetic effect.

As to claim 2, Hover describes the use of particles with and without filler, such that the amount of filler in respective particles would be different (Column 3, Lines 55-60). It is noted that Example 6 in Column 11 expressly describes an embodiment in which such a mixture is provided (particles with and without filler).

Regarding claims 4 and 18, the flat articles of Hover are based on thermoplastic particles (Column 1, Lines 13-20).

As to claim 5, the respective particles necessarily have an average molecular weight.

With respect to claims 6 and 25, as noted above, a blend of differently colored agglomerates or granules is provided to the conveying system.

As to claims 7 and 29, Hover suggests the use of transparent synthetic resin particles (Column 3, Lines 55-60).

Regarding claims 8 and 22, the initial mixture dispensed onto the conveying system can be in the form of agglomerates or particles. If in the form of agglomerates, larger agglomerates (between differently colored agglomerates) are formed after the thermal pre-treatment. On the other hand, if in the form of granules, agglomerates (between differently colored particles or granules) are formed after the thermal pre-treatment.

As to claims 19-21, Hover suggests multiple techniques to accomplish the compression or consolidation step, including using a roll press/calendar (metal and rubber rolls) or a single or double belt press (Column 8, Lines 25-50, Figures 2 and 3).

Regarding claims 24, Hover states that the subsequent to the thermal pre-treatment, the agglomerate or granulated material can optionally be mechanically comminuted to a mixture of particles (Abstract).

With respect to claim 26, as noted above, Hover suggests the use of different colored particles. It is further noted that Hover expressly teaches the use of different shades of a single color (Column 9, Lines 1-7).

Regarding claim 28, the differently colored particles necessarily have an average particle size.

With respect to claim 40 and 42, as acknowledged by applicant, the labyrinthine interface between the consolidated jaspe agglomerated particles is inherent (Amendment dated October 3, 2003, Page 13), it being further noted the figures of Hover depict such a labyrinthine arrangement.

As to claims 44 and 46, Hover discusses the use of particles dyed in one color or unicolored particles (Column 2, Lines 50-52).

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Enomoto (JP 56-4424) discloses a method of forming a floor material comprising the steps of providing transparent granules and a plurality of differently sized, colored granules to a conveying assembly, vibrating said granules, and heating and pressing said granules into an integrated sheet (Abstract and Figures 1-7).

Yakubik (US 3,038,828) teaches a method of forming a surface floor covering comprising the steps of providing a plurality of thermoplastic particles (can be single colored or multi-colored) to a base substrate, applying a transparent film one said particles, and consolidating the plurality of particles via heat and pressure to form a sheet.

Quinn (US 5,635,266) teaches a method of forming a consolidated sheet (to be further processed into a welding rod) comprising the steps of providing a plurality of differently colored, thermoplastic particles, mixing said plurality of particles, and consolidated said particles between a pair of rollers.

Josa (JP 5-125356) is directed to a method of forming a welding rod comprising the steps of providing colored and transparent thermoplastic particles, mixing said particles, and extruding the thus mixed particles into a welding rod. It is noted that the reference does suggest that the mixture can alternatively be extruded into a flat tape or sheet as desired.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Justin R Fischer** whose telephone number is **(571) 272-1215**. The examiner can normally be reached on M-F (7:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on (571) 272-1226. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

  
Justin Fischer

January 22, 2004

  
JEFF A. AFTERGUT  
PRIMARY EXAMINER  
GROUP 1300